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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 EQUAL EMPLOYMENT OPPORTUNITY
10 COMMISSION,

11 Plaintiff,

12 v.

13 FRY'S ELECTRONICS, INC.,

14 Defendant.

No. C10-1562RSL

ORDER TO SHOW CAUSE

15 On May 10, 2012, the Court granted in part plaintiff's motion for sanctions in the
16 above-captioned matter. Although the Court found that defendant had spoliated evidence, it
17 believed that the prejudicial effect of the spoliation could be counteracted by (a) instructing the
18 jury that one of the justifications for firing plaintiff Lam was pretextual and (b) allowing plaintiff
19 considerable leeway in arguing what information might have been gleaned from the computer
20 hard drivers that defendant destroyed.

21 It has now come to the Court's attention that defendant withheld from discovery
22 information regarding prior allegations of sexual harassment leveled against Minasse Ibrahim
23 and the investigation of those allegations. The Court has already supplemented the record to
24 ensure that these late-disclosed documents are considered in the context of the pending
25 dispositive motion. Nevertheless, this separate order is necessary because defendant's response
26 to plaintiff's motion to supplement (Dkt. # 210) reveals the very real possibility that the truth-

ORDER TO SHOW CAUSE

1 finding mission of this tribunal has been compromised.

2 Defendant appears to believe that its abject failure to comply with its discovery
3 obligations was not only warranted, but somehow praiseworthy. It could not be more wrong.
4 Defendant had in its possession documents and information that were responsive to plaintiff's
5 discovery requests, clearly relevant to plaintiff's claims, and not subject to any privilege. There
6 was no legitimate basis for objecting or dissembling. Rather than turn over the requested
7 information, defendant raised privacy concerns and reasonable-sounding objections to the scope
8 of the inquiry in a bid to narrow the request and hide the problematic documents in its files. It
9 apparently worked. The EEOC, having no knowledge of the 2001 sexual harassment complaint
10 and not suspecting that opposing counsel would affirmatively try to gain an unfair and
11 unwarranted advantage, fell for the ruse: it did not seek to compel full and complete responses
12 to the requests for production. Discovery is not, however, a game where the parties get to hide
13 relevant evidence by being tricky or by making it so difficult to obtain the requested information
14 that the requesting party gives up. The responsive, relevant, unprivileged sexual harassment
15 documents should have been turned over without objection or delay. Counsel for the defendant
16 justify their acts as "principled resistance to discovery [-] to be expected in hard-fought cases."
17 Dkt. # 210 at 2. Defendant's conduct was far from principled in this instance, and the Court
18 finds this conduct to be a violation of Local General Rule 3(d).

19 The destruction of sales performance data, MOPARS, and computer hard drives,
20 the belated discovery of A Team information only after the Court ordered a second search, and
21 the efforts taken to conceal the 2001 sexual harassment complaint leave the Court with the
22 distinct impression that defendant's willful and damaging actions have interfered with plaintiff's
23 attempts to prove its claims. To make matters worse, the Court has no way of knowing whether
24 the EEOC and Mr. Blankenship have been able to ferret out every instance of defendant's
25 recalcitrance and/or spoliation, and the Court has lost confidence in defense counsel's ability or
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1 willingness to act forthrightly in this matter.¹

2 For all of the foregoing reasons, defendant shall appear before the undersigned in
3 Courtroom 15106 on June 20, 2012, at 11:00 a.m. and show cause why sanctions, including
4 dispositive findings, should not be entered against it.

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6 Dated this 13th day of June, 2012.

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9 Robert S. Lasnik

10 United States District Judge
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22 ¹ The urgent presentation of hundreds of pages of phone records with the argument that they
23 were “relevant to the EEOC and Ms. Rios’s allegations that ‘countless’ offensive text messages from
24 Minasse Ibrahim constituted severe or pervasive sexual harassment” is the latest example of a disturbing
25 lack of candor on counsel’s part. The phone records are for the period October 7, 2007, to March 31,
26 2008, at least five months after Ms. Rios complained to her supervisors and Mr. Lam was fired.
Counsel’s relevance argument verges on the ridiculous: evidence showing that Mr. Ibrahim did not text
Ms. Rios months after he knew that he was under investigation tells us nothing about his conduct in
2006 and early 2007.